

POLICY NOTE
THE CONTAMINANTS IN FOOD (SCOTLAND) REGULATIONS 2013
S.S.I. 2013 /217

1 Description

- 1.1 The above instrument was made in exercise of the powers conferred by sections 16(1)(a), (c), (e) and (f), 17(1) and (2), 26(1)(a) and (3), and 48(1) of the Food Safety Act 1990 and paragraph 1A of Schedule 2 to the European Communities Act 1972. The instrument is subject to negative resolution procedure.

2 Policy Objective

- 2.1 This instrument provides for the enforcement in Scotland of the provisions of:
- Commission Regulation (EU) No. 1258/2011, amending [Regulation \(EC\) No 1881/2006](#) as regards maximum levels for nitrate in foodstuffs; and,
 - Commission Regulation (EU) No. 610/2012 amending [Regulation \(EC\) No 124/2009](#) setting maximum levels for the presence of coccidiostats and histomonostats in food resulting from the unavoidable carry-over of these substances in non-targeted feed.
- 2.2 This instrument provides for offences of contravening certain provisions of Regulation (EC) No. 1881/2006, as most recently amended, and of Regulation (EC) No. 124/2009, as most recently amended, and for defences in particular circumstances against prosecution for committing an alleged offence and specifies the penalties that the Courts may impose upon conviction for an offence.
- 2.3 This instrument introduces ambulatory reference provisions to include the Articles of Regulation (EC) 1881/2006 (previously only the Annex was included) and the Articles and Annex of Regulation (EC) No. 124/2009.
- 2.4 This instrument will also revoke the Contaminants in Food (Scotland) Regulations 2010; the Mineral Hydrocarbons in Food (Scotland) Regulations 1966; and revoke and remake the Erucic Acid in Food (Scotland) Regulations 1977 as amended.

3 Matters of special interest to the Delegated Powers and Law Reform Committee

- 3.1 The European Regulations are binding and directly applicable from the dates they come into force. However, as the Contaminants in Food (Scotland) Regulations 2010 do not contain an ambulatory reference to Regulation 610/2012 there has therefore been an enforcement gap since 30 July 2012. Regulation 610/2012 amends Regulation 124/2009 which sets levels for the unavoidable carry-over of traces of active substances from non-target feed to foodstuffs and is intended to ensure efficient functioning of the internal market. Regulation 610/2012 lowers the tolerable level for Lasalocid Sodium and adds guinea fowl to the Diclazuril levels while Maduramicin and Nicarbazin tolerances are relaxed.
- 3.2 The FSA considers it unlikely that there has been any detrimental effect on food safety or the internal market; but has taken the opportunity to rectify this enforcement gap by the inclusion of an ambulatory reference to Regulation 124/2009 in the Contaminants in Food (Scotland) Regulations 2013.

- 3.3 The initial intent was to consult on these Regulations during 2012. The publication of EU Regulation 610/2012 with little notice in July 2012 led to an initial delay as the domestic Regulations were re-drafted to include provisions, and impacts assessed. At UK level, the domestic Regulations on Erucic Acid and on Mineral Hydrocarbons were reviewed and on balance it was considered that the revocation & consolidation of these Regulations would simplify food contaminants Regulations and concur with better regulation principles.
- 3.4 The FSA plans a common coming into force date of 1 October 2013 across the UK for the Contaminants Regulations; subject to differences in scrutiny procedure and parliamentary timetables, this should ensure consistency of enforcement provisions across the internal UK market.

4 Legislative Context

- 4.1 European Union (EU) legislation on contaminants in food is made under the contaminants framework Regulation 315/93/EEC (“the framework Regulation”). This Regulation lays down the EU procedures for dealing with contaminants in food and it applies general requirements to those contaminants that are not covered by other specific EU legislation. In order to continue reducing the disparities between the existing laws of Member States with regard to maximum limits for contaminants in certain foodstuffs and the consequent risk of distortion of competition, Commission Regulation (EC) No. 1881/2006 was introduced under the framework Regulation to ensure market unity while complying with the principle of proportionality. The provisions and requirements of Commission Regulation 1881/2006 (and its predecessor Regulation (EC) No. 466/2001) have applied across the EU since April 2002.
- 4.2 The Commission Regulation (EU) No. 1258/2011 was published in the Official Journal (OJ) of the EU on 3rd December 2011, came into force on 23rd Dec 2011 and applied as from that date, apart from maximum levels for rucola which applied from 1 April 2012.
- 4.3 The Commission Regulation (EU) No. 610/2012 was published in the Official Journal (OJ) of the EU on 10th July 2012, came into force on 30th July 2012 and applied as from that date.
- 4.4 The [Council Directive 76/621/EEC](#) relating to the fixing of the maximum level of erucic acid in oils and fats intended as such for human consumption and in foodstuffs containing added oils or fats was published in the Official Journal on 28 July 1976 and applied as from 1 January 1977.

5 Territorial Extent and Application

- 5.1 This instrument applies in relation to Scotland only. Separate but parallel legislation is being made in England, Wales and Northern Ireland.

6 European Convention on Human Rights

- 6.1 This instrument does not raise any issues regarding The European Convention.

7 Consultation

- 7.1 The Food Standards Agency has consulted with stakeholders including industry, trade bodies, enforcement bodies and other Government departments throughout the development and negotiations of these measures.
- 7.2 Two hundred and fifty two stakeholders were consulted by FSA Scotland and responses were received from The Government Chemist and the Institute of Food Science & Technology.

- 7.4 The two responses were virtually identical and broadly in agreement with the proposal. Two points raised were noted by FSAS: on mineral hydrocarbons the Agency noted the suggestion to add appropriate wording to the Scottish Food Standards Training Manual; and the Agency will continue to liaise with EFSA on erucic acid issues.

8 Financial Effects

- 8.1 Any impact on businesses from this instrument is likely to be for associated familiarisation costs. These include the reading and dissemination of the Regulations to key staff within the organisation.
- 8.2 This instrument will have negligible impact on sampling and analysis costs resulting from new limits for nitrate in rocket. Similarly, additional costs associated with testing foodstuffs for coccidiostats and histomonostats to determine the presence of residues, and additional cleaning required between production runs are likely to be minimal.
- 8.3 This instrument will have no particular impact on charities or voluntary bodies, rural areas or on members of the ethnic communities of any particular racial group.
- 8.4 The impact on the public sector is believed to be minimal. However, there may be an impact on the Food Standards Agency as and when it carries out surveys on foods. This impact may involve having to carry out more research into the official controls on chemical contaminants, including work to establish methodologies for determining such migration and to ensure compliance with the legislation.
- 8.5 A Business and Regulatory Impact Assessment is attached to this memorandum.

9 Regulating small business

- 9.1 This instrument will apply to all businesses small and large and the impact on small and medium sized businesses is unlikely to be significant. This view has been supported by industry following earlier consultations, when they indicated that the proposals would not disproportionately affect them, nor would they hinder competitiveness. Such businesses are also encouraged to respond to issues which they feel may have an impact on their ability to compete in the wider market. To date no comments have been received from small businesses.

10 Monitoring & review

- 10.1 The Agency will aim to review the Regulations in 2014. Local Authorities are responsible for enforcing much of the food safety legislation, including the maximum levels for contaminants in food. Convention of Scottish Local Authorities (COSLA) and the Association of Public Analysts are consulted specifically through established liaison mechanisms and provide feedback to the Agency about the effectiveness of these instruments. Businesses operators act similarly through their representative bodies and directly in response to consultation mechanisms.
- 10.2 Local authorities in Scotland routinely monitor foodstuffs on sale to the public to ensure compliance with the Regulations. The results of this work carried out by the Agency are published and are available on the Agency's website at:
<http://www.food.gov.uk/enforcement/monitoring/>
- 10.3 The European Commission investigates whether limits should be set for additional contaminants and also reviews the maximum limits for those contaminants currently in the

legislation and the foods that are subject to control. Such limits may be moved upwards or downwards in the light of ongoing monitoring and of advances in scientific knowledge within the EU as a whole.

- 10.4 The Agency will also work with enforcement authorities where problems or suspected infringements of the Regulations arise. The effectiveness of the Regulations will also be monitored via feedback from stakeholders as part of the ongoing policy process.

Food Standards Agency in Scotland

24 June 2013

Contact:

Dr Will Munro
Food Standards Agency in Scotland,
St Magnus House, 25 Guild Street,
Aberdeen, AB11 6NJ
Tel No: 01224 285161
Email: will.munro@foodstandards.gsi.gov.uk